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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

EX PARTE

Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Ex Parte Contact -- CC Docket No 96-98

In the Matter of Implementation of the Local Competition
Provisions of the Telecommunications Act of 1996

NextWave Telecom Inc.

Dear Mr. Caton:

Representatives of NextWave Telecom, Inc. met on July 26, 1996, with Karen Brinkmann of the Wireless Telecommunications Bureau to discuss NextWave's views already expressed in the above-mentioned proceeding.

Sincerely,

Jennifer Walsh
Director, Industry Affairs

Enclosure

cc: Karen Brinkmann

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

July 25, 1996

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, D.C. 20554

Re: CC Docket 96-98

**In the Matter of Implementation of the Local Competition Provisions of
the Telecommunications Act of 1996**

NextWave Telecom Inc.

Dear Chairman Hundt:

In recent years, the FCC has done a tremendous job of eliminating unnecessary regulatory burdens and promoting the entry of new service providers in the wireless communications industry. The Commission's creative use of auctions to license spectrum has generated billions of dollars for the U.S. Treasury and made it possible for NextWave Telecom Inc. and other entrepreneurial companies to enter markets far more rapidly than was possible in the past. The agency's efforts to create an open, minimally regulated wireless marketplace have helped make it possible for new carriers to undertake the risks of deploying modern, competitive wireless facilities across the country. And there is no doubt that NextWave and other new entrants are generating immediate and substantial public interest returns in the form of jobs, economic growth, technological innovation, and increased consumer choice.

As part of its effort to advance these public interest goals, NextWave has promised to pay the U.S. Treasury more than \$4 billion for Personal Communications Service (PCS) licenses. But this financial commitment is only the beginning. NextWave must now make the necessary investment to build our wireless systems. As you are well aware, the FCC is on the brink of making decisions that will greatly influence whether the public interest returns of the wireless revolution will be fully realized. With all the costs and risks associated with deploying a wireless network, these decisions will be crucial.

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For many weeks, various parties have been pressuring the Commission to implement the 1996 Telecommunications Act in ways that, intentionally or not, will return wireless companies to the pre-auction days of traditional regulation. If successful, those efforts will force new "wireless" entrants to commit substantial resources to state and local regulatory proceedings at a critical time -- our first few years of existence. To prevent this from happening, NextWave urges the FCC to avoid a situation that heaps massive new regulatory burdens on one segment of the industry. Rather, the Commission should recall that the major thrust of the new law is to apply *minimal* regulation on the new entrant in the marketplace.

NextWave Telecom Inc.

Section 332 of the Communications Act provides a strong foundation for the continuation of pro-competitive, deregulatory wireless policies. As you have found repeatedly, that provision embodies "an unambiguous congressional intent to foreclose state regulation in the first instance." It also is a plain congressional directive "to establish a *national* regulatory policy" for wireless, "not a policy that is balkanized state-by-state." See, e.g., Petition of the Connecticut Department of Public Utility Control, 10 FCC Rcd 7025, paras. 8 & 14 (1994). Recently, those who claimed the language of Section 332 required a contrary, pro-regulatory result were routed on appeal. See Conn. Dept. of Regulatory Utility Cont. v. FCC, 78 F.3d 842 (2d Cir. 1996). Continued application of federally-established, market-oriented policies is required to allow new entrants to apply their full energy and capital to the job of building competitive national wireless networks.

The Telecommunications Act of 1996 does not dismantle the federal regulatory superstructure Congress established in 1993 by enacting Section 332. The 1996 Act's mandate for a "pro-competitive, deregulatory framework" is fully in harmony with Section 332's overarching policies. Moreover, neither the express language of the 1996 Act nor its legislative history contains any reference to a congressional intention to repeal Section 332. It strains credulity to claim that Congress, in 1996, intended to eviscerate the comprehensive wireless regulatory system it established only three years ago and simply neglected to create a record of such intent. No amount of legalistic argumentation can obscure the inherent absurdity of such a claim, which should be rejected out-of-hand. The regulation of wireless carriers should continue to be governed by federal policies developed under Section 332.

No matter when the Commission decides to act, it must do so decisively on the issue of reciprocal rates for the exchange of traffic between commercial mobile



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mobile radio service (CMRS) providers and incumbent local exchange carriers (LECs). Today, those rates are reciprocal in name only. LECs typically charge 3 cents per-minute to terminate a wireless call on their networks and refuse to pay anything to have their calls terminated on wireless networks. This imbalance, which is affirmatively enforced by many state public utility commissions, illustrates the degree of the LECs' existing market power and demonstrates why a wireless interconnection policy must be established at the federal level.

The best public policy outcome is clear and straightforward. The Commission must establish an economically reasonable interim compensation standard for LEC-CMRS interconnection. That standard must be imposed as soon as practicable, so that competition in the local exchange can be removed from regulatory arenas and focused where it belongs -- on consumers.

NextWave Telecom Inc.

NextWave continues to believe that "bill and keep" is the most appropriate interim standard, particularly for new entrants. It is almost universally accepted that bill and keep is an economically efficient interconnection policy where traffic flows are roughly equal. Uncontested evidence before the Commission shows that the first operational broadband PCS provider and the LEC with which it interconnects are experiencing such traffic flows. Given competitive pressures, there is every reason to believe these traffic-flow results will represent the typical experience for new entrants, thereby establishing bill and keep as a reasonable and attractive interim interconnection pricing policy for such companies.

The record also provides solid ground for an alternative interim standard. Every empirical study in the record confirms that the forward-looking cost of handling an additional call on a LEC network is, on average, approximately 0.2 cent per minute. That figure is a "blended" calculation, which incorporates both end office and tandem switching costs in proportions typical of LEC networks. The fact that so many different studies converge on a 0.2 cent per minute result strongly suggests that such a result is accurate and robust. Accordingly, if the Commission decides not to establish bill and keep as an interim reciprocal rate, there is a solid record basis for using a 0.2 cent per minute figure for that purpose. Whatever mechanism the Commission selects, LECs and new entrants should be required to utilize it, absent mutual agreement to the contrary, unless a carrier demonstrates, based on actual traffic and cost data, that a different arrangement is required for it to recover its traffic termination costs.



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In making these and other decisions, the FCC should be particularly mindful of the economic realities facing wireless carriers. New market entrants must contend with significantly higher network costs and lower initial traffic volumes than those associated with incumbent operators' fixed network costs. PCS operators, for example, must spread higher network costs over a comparatively low number of subscribers in the first few years of network operations. Incumbent carriers, on the other hand, enjoy the immediate benefit of spreading their costs over a large volume of subscribers.

The FCC's rules also should contemplate wireless carriers' interconnection costs as they pertain to data transmissions. NextWave and other wireless service providers intend to transmit millions of short bursts of data on their networks, but it is still unclear how interconnection charges would be calculated for this type of service. In addition, the Commission should consider how interconnection charges will impact carriers and consumers in the context of the Internet. For instance, should the same interconnection charges that apply to voice services apply to wireless data services?

NextWave Telecom Inc.

NextWave realizes that many pressing matters are consuming your attention, as the Commission and its staff works overtime to meet legislative deadlines. Our company, therefore, is particularly appreciative of your attention to these issues of critical interest to wireless consumers and to intermodal competition.

Sincerely,

Allen Salmasi
Chairman and Chief Executive Officer

cc: Commissioner James H. Quello
Commissioner Rachelle B. Chong
Commissioner Susan Ness
Michele C. Farquhar
Regina M. Keeney